IN THE HIGH COURT OF DELHI AT NEW DELHI

CRP. No. 158/2007

Judgment delivered on: September 10 ,2007

1. Sh. Ramesh Singh @ Ramesh Chand

2. Sh. Sunder Lal
Both sons of late Shri Ram Kishan
R/o 36, Sarai Kale Khan,
Nizamudin,
New Delhi. ..... Petitioner

Through: Mr. G.K. Srivastava for the petitioner.

versus

1. Sh. Satish Chand Singhal
S/o Late Sh. Malook Chand Agarwal,
R/O A-108, Sector-40
NOIDA

2. Sh. Hem Chand Saini
S/o Sh. Gyashi Ram Saini
R/o 8423, Arya Nagar,
Pahar Ganj,
Delhi. ..... Respondents

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may

be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J.

Aggrieved with the order dated 12.5.2007 of the Additional District Judge dismissing the application of the petitioners under Order 1 Rule 10 CPC, the challenge has been made assailing the said order in the present petition. The brief facts which are necessary for disposing the present petition inter alia are that vide Memorandum of Understanding dated 11.3.2004 and Agreement to Sell dated 20.10.2004 Mr.Ram Kishan, father of the present petitioners had agreed to sell land measuring 6810 sq. yards of Khasra No.489/1 situated at Village Kilokari, Tehsil Defence Colony, Distt. South Delhi for a total consideration of Rs.2 crores. Against the said consideration amount, the deceased father of the petitioners had received a sum of Rs.16,01,000/- in the manner as stated in the said Agreement to Sell. The respondent/plaintiff had filed a suit for recovery of Rs.19,99,180/-

after it was found by him that the said land was acquired and the same could not have been sold by the petitioners in favour of the respondent No.1. The petitioners contested the said suit filed by respondent No.1. The petitioners also preferred an application under Order 1 Rule 10 CPC seeking impleadment of the co-owners of the suit land. The said application of the petitioners has been dismissed by the learned ADJ on the ground that the co-owners sought to be impleaded by the petitioners were not privy to the Memorandum of Understanding dated 11.3.2004 as well as the Agreement to Sell dated 20.10.2004.

I have heard learned counsel for the petitioners. The contention of counsel for the petitioners is that although the co-owners are not privy to both the said agreements but respondent No.1 was fully aware of the fact that the land under sale belonged to and were owned by them. Counsel, thus, contends that the said co-owners are not only proper but are also necessary parties and in their absence the suit in question cannot be effectually tried. Learned counsel for the petitioners has invited my attention to some of the terms of the Memorandum of Understanding as well as Agreement to Sell where reference has been made to the

ownership of these co-owners over the land in question. Counsel for the petitioners also contends that if these co-owners are not impleaded in the suit then the petitioners would not be able to recover the amount already paid by the petitioners to these co-owners in respect of the said land in question.

There is no force in the arguments advanced by counsel for the petitioners. The object of Order 1 Rule 10 is to discourage contests on technical pleas, and to save honest and *bona fide* claimants from being non-suited. The power to strike out or add parties can be exercised by the court at any stage of the proceedings. Under this rule, a person may be added as a party to a suit in the following two cases:

(*1*) when he ought to have been joined as plaintiff or defendant, or

(*2*) when, without his presence, the questions in the suit cannot be completely decided.

The co-owners are neither privy to Memorandum of Understanding dated 11.3.2004 nor to the Agreement to Sell dated 20.10.2004. The money towards part sale consideration amount of Rs.16,01,000/- was received by the father of the

present petitioners and not by the said co-owners. The terms of the Memorandum of Understanding as well as Agreement to Sell clearly shows that it was the deceased father of the petitioners who were to execute the documents of title in favour of respondent No.1 after receiving entire sale consideration amount and possession of the land was also to be delivered by the deceased father of the petitioners and not the co-owners. The present petitioners have further declared themselves to be Bhoomidars of the land in question and whatever title documents were in possession of the deceased father of the petitioners, the same were handed over by him to respondent No.1. By seeking impleadment of the co-owners, the petitioners are trying to complicate the issue. Any right of the petitioners against the co-owners of the land is a separate and independent right and the rights inter-se between them cannot form subject matter of the suit in question. Based on said documents, there cannot be any two opinions that the Court can direct impleadment of only those parties whose presence before it may be necessary to adjudicate upon and to resolve the question involved in the suit effectually and completely. It is abundantly clear that necessary parties are

those persons in whose absence no decree can be passed by the court or whose presence before the court would be necessary in order to enable the court to effectually and completely adjudicate upon and settle all the questions involved in the suit. Keeping in view the aforesaid principles in mind, these co-owners are admittedly not privy to both the agreements. The co-owners sought to be impleaded by these petitioners do not appear to be either necessary or proper parties and it cannot be said that their presence is essential for deciding the suit effectually and completely. No consideration amount has been paid to these co-owners. No obligation has been laid on these co-owners under the terms and conditions of both the said agreements for effectuating and completing the transaction in question and in the plaint also no relief has been claimed by respondent No.1 against these co-owners.

In the light of the aforesaid discussion, I do not find any infirmity in the impugned order passed by the Trial Court.

There is no merit in this petition. Dismissed.

September 10, 2007 **KAILASH GAMBHIR**
ga **JUDGE**